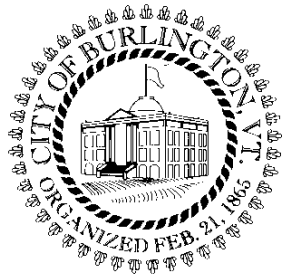


## Department of Permitting and Inspections

Zoning Division  
149 Church Street  
Burlington, VT 05401  
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Mary O'Neil, AICP, Principal Planner  
Ryan Morrison, Associate Planner  
Vacant, Planning Technician  
Celeste Crowley, Permit Technician



### MEMORANDUM

To: Development Review Board  
From: Mary O'Neil, AICP, Principal Planner  
Date: February 1, 2022  
RE: ZP21-816 OG, an Amendment to PUD permitted under ZP20-0717CA/MA, ZP20-0718CA, ZP20-0719CA, ZP20-0720CA; 273 Pearl St., 11, 15 and 21 Hungerford Terrace

**Note: These are staff comments only. Decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.**

**File:** ZP21-816OG, an amendment to ZP20-0717CA/MA, ZP20-0718CA, ZP20-0719CA, ZP20-0720CA.

**Location:** 273 Pearl Street, 11, 15 and 21 Hungerford Terrace

**Zone:** RH **Ward:** 8E

**Parking District:** Neighborhood

**Date application accepted:** December 9, 2021

**Applicant/ Owner:** Benjamin Frye/18138 Parking LLC, Triple Tree Group, LLC, 15 Hungerford Terrace, LLC and 21 Hungerford Terrace LLC. (Bruce Baker, Greg Doremus.)

**Request:** Amendment to previously approved Planned Unit Development (*demolition of a single family home at 15 Hungerford Terrace and a garage at 11 Hungerford Terrace; demolish south porch and move garage at 21 Hungerford Terrace; construct 12 unit residential building. Net new units = 11. Site changes, including retaining walls, stormwater infrastructure. Parking changes with 17 space parking waiver request (42% of required residential parking.)*)

**Amendment to increase unit count by three units** at 15 Hungerford, (net new 14 units); **elevation, window and site changes**, including construction of window wells to accommodate below grade units.



## Background:

### 273 Pearl Street (constructed 1952)

- **ZP20-0717CA/MA**, 4 parcel PUD. Approved September 17, 2020. One year extension issued August 18, 2021.
- **Zoning Permit 16-0273CA**; replace 3 windows. September 2015.
- **Zoning Permit 15-0427CA**; regrade portion of lot and install retaining wall. Also see 15 and 21 Hungerford Terrace. September 2014.
- **Non-applicability of Zoning Permit Requirements 15-1015NA**; roof replacement. April 2015.
- **Zoning Permit 12-0231FC**; install chain link security fence on top of existing concrete block wall. September 2011.
- **Zoning Permit 00-466**; reside existing medical (dental) office in vinyl siding with new front elevation changes that include new windows, door and unenclosed entry roof canopy. No increase in coverage. Front yard setback encroachment allowed as per 5.3.6 (g). April 2000.
- **Zoning Permit 81-305**; change existing office to dental office. January 1981.
- **Zoning Permit n.n.**; Enlarge existing non-conforming use by addition of 21' x 16'. Approved May 1965.
- **Zoning Permit n.n**; three unilluminated signs. Approved July 1960.
- **Notice to Gates Professional Pharmacy**, sign exceeding size permitted in Zone One. August 1952.
- **Petition to building a one story building approximately 24' x 40' to be used as prescription laboratory, doctor's office or professional use.** Approved December 1951.



### 11 Hungerford Terrace (constructed 1912)

- **Zoning Permit 20-0718CA**, 4 parcel PUD. Approved September 17, 2020. One year extension issued August 18, 2021.
- **Zoning Permit 18-10990CA**; handicap ramp, stoop, addition, parking changes. Convert a portion of the garage's front wall into a retractable wall to accommodate interior parking. July 2018.
- **Zoning Permit 18-0812CA**; replacement windows. April 2018.
- **Non-applicability of Zoning Permit Requirements 12-0252NA**; replace retaining wall in kind at same location & same height. August 2011.



### 15 Hungerford Terrace (constructed 1994)

- **Zoning Permit 20-0719CA**; 4 parcel PUD. Approved September 17, 2020. One year extension issued August 18, 2021.
- **Zoning Permit 18-1091CA**; change of use from single family to duplex. Parking changes. July 2018.
- **Zoning Permit 15-0428CA**; regrade portion of lot and install retaining wall. See also 21 Hungerford Terrace and 273 Pearl Street. Issued September 2014; permit relinquished.
- **Zoning Permit 02-377**; Construct 60' retaining wall. Issued March 2002, permit relinquished.
- **Zoning Permit 96-407**; installation of skylight in single family home. April 1996.
- **Zoning Permit 094-059 and 94-059A**; construction of a single-family home on existing vacant lot. February 1994.



### 21 Hungerford Terrace (constructed 1922)

- **Zoning Permit 20-0720CA**; 4 parcel PUD. Approved September 17, 2020. One year extension issued August 18, 2021.
- **Zoning Permit 18-1092CA**; Change of use from single family to duplex; add habitable space to basement. Shared parking and driveway with 11 and 15 Hungerford. See related permits AP18-1090CA and ZP18-1091CA. July 2018.
- **Zoning Permit 15-0429CA**; regrade portion of lot and install retaining wall. See also 15 Hungerford Terrace and 273 Pearl Street. Permit issued September 2014; permit relinquished.
- **Zoning Permit n.n.**; Use two front rooms for doctor's office. ZBA approved April 1966.



### Overview:

This application seeks to amend the overall PUD with the following changes:

1. Increase unit count by 3 units at 15 Hungerford Terrace. Net new units across the site: 14. Total residential units across the site: 22.
2. 25 parking spaces remain across the collective site. The 6 spaces behind 273 Pearl Street may be utilized toward the parking requirement of the three new residential units, as properties within 200' of Pearl Street no longer have a minimum parking requirement (Mixed Use Multi Modal parking district, adopted since the earlier PUD review.)
3. 17 space parking waiver was issued in original approval. (42%)
4. Building elevation changes, site changes, landscaping changes.

Here is a description of the original project approval: *Planned Unit Development, utilizing 273 Pearl Street, 11, 15 and 21 Hungerford Terrace to create a new 12 unit residential building on the site of 15 Hungerford which will be demolished. No changes will occur to 273 Pearl Street, but are included as part of the shared infrastructure improvements. One accessory building (garage, 11 Hungerford) and a porch (21 Hungerford) are proposed to be demolished and the garage at 21 Hungerford relocated to the rear of the lot. A retaining wall will be constructed to ameliorate the grade change west of Hungerford Terrace. Parking changes, 17 space (47.22% residential) parking waiver request.*

**Applicable Regulations:**

Article 2 (Administrative Mechanisms), Article 3 (Applications, Permit and Project Reviews), Article 4 (Zoning Maps and Districts), Article 5 (Citywide General Regulations), Article 6 (Development Review Standards), Article 8 (Parking), Article 9 (Inclusionary and Replacement Housing), and Article 11 (Planned Unit Development).

**Recommended motion:** **Certificate of Appropriateness Denial**, per the following Findings:

**I. Findings**

**Article 2: Administrative Mechanisms**

**Section 2.7.8 Withhold Permit**

**Per this standard**, the applicant is required to remedy all violations and close out all zoning permits issued after July 13, 1989 prior to issuance of a Certificate of Occupancy for this permit. Please refer to attached list for guidance on open permits/violations. **Affirmative finding as conditioned.**

**Article 3: Applications, Permits and Project Reviews**

**Section 3.2.1 Pre-Application Conferences**

The original project was reviewed at NPA meetings for Wards 1 and 8 January 8, 2020. The increase of three new units does not trigger a new NPA review. **Not applicable.**

**Part 3: Impact Fees**

**Article 3.3.2 Applicability**

*Any new development or additions to existing buildings which result in new dwelling units or in new nonresidential buildings square footage are subject to impact fees as is any change of use which results in an added impact according to Section 3.3.4.*

Impact fees were calculated by staff based on the gross new area. That area included the basement level, which is now proposed to be converted from laundry, tenant storage, bike storage and mechanical to residential use. That gross area was provided as 10,176 sq. ft. (see below.) If confirmed by applicant, the estimate of applicable Impact Fees remain as follows:

**Impact Fee Calculation**

**273 Pearl St., 11, 15, 21 Hungerford Terrace**

**ZP20-0717CA/MA**

Existing gross sf. 15 Hungerford Terrace (proposed for demo)

2,464 Assessor's Data

Proposed SF 15 Hungerford Terrace

3,160 / floor x 4 floors = 12,640 sf

**Difference: 10,176**

**SF of Project** 10,176

<b>Department</b>	<b><u>Residential</u></b>	
	<b>Rate</b>	<b>Fee</b>
Traffic	0.199	2,025.02
Fire	0.225	2,289.60
Police	0.045	457.92
Parks	0.754	7,672.70
Library	0.467	4,752.19
Schools	0.975	9,921.60
<b>Total</b>	2.665	<b>\$ 27,119.03</b>

Impact Fees may be waived in whole or in part by the Housing Trust Fund Manager, based upon the number of inclusionary units. See Article 9, below. **Affirmative finding as conditioned.**

### **Section 3.3.7 Time and Place of Payment**

*(a) New Buildings: Impact fees must be paid at least seven (7) days prior to occupancy of a new building or any portion thereof.*

As noted. **Affirmative finding as conditioned.**

### **Part 5, Conditional Use & Major Impact Review:**

#### **Section 3.5.6 Review Criteria**

Within the Residential High Density Zoning District, Major Impact Review is required for the addition of 10 or more residential units. As this proposal adds only 3 units, Major Impact Review is not triggered. The original conditions of approval relative to MA/CU under 20-0717CA/MA, 20-0718CA, 20-0719CA and 20-0720CA not herein altered remain in effect. **Affirmative finding as conditioned.**

### **Article 4: Zoning Maps and Districts**

#### **Sec. 4.4.5 Residential Districts**

*a) Purpose:*

*The Residential Districts are intended to control development in residential districts in order to create a safe, livable, and pedestrian friendly environment. They are also intended to create an inviting streetscape for residents and visitors. Development that places emphasis on architectural details and form is encouraged, where primary buildings and*



*entrances are oriented to the sidewalk, and historic development patterns are reinforced. Parking shall be placed either behind, within, or to the side of structures, as is consistent with the district and/or the neighborhood. Building facades designed for parking shall be secondary to the residential aspect of a structure.*

*5. The Residential High Density (RH) district is intended primarily for high density attached multi-family residential development. Development is intended to be intense with high lot coverage, large buildings, and buildings placed close together. Parking is intended to be hidden either behind or underneath structures.*

The proposed replacement residential building at 15 Hungerford Terrace presents a large building with higher lot coverage than currently exists, consistent with this standard. Parking is placed behind the buildings.

**Affirmative finding.**

#### **(b) Dimensional Standards and Density**

##### **Table 4.4.5-2: Base Residential Density**

High Density: RH - 40 units/acre

The total area of all four lots is 27,318 sf, or .627 acres. At 40 units/acre, the site might accommodate 25 dwelling units. With 1 existing at 273 Pearl, 5 units at 11 Hungerford, and 15 proposed at 15 Hungerford and 1 at 21 Hungerford, a total of **22 units** are proposed; within the base residential density allowance for the zoning district. **Affirmative finding.**

##### **Table 4.4.5-3: Residential District Dimensional Standards**

In the RH zoning district, coverage is limited to 80% of the lot (before bonuses.) Revised Plan A2 defines proposed coverage at **81%**. The maximum lot coverage with the Inclusionary Bonus is 92%. IZ units will be required for the creation of 14 new residential units.

Under the PUD regulations, setbacks apply to the periphery of the project. As a corner development, there are two fronts and two sides. Establishment of the (new) front yard setback of 15 Hungerford Terrace utilizes both the existing (non-conforming) setback, and the average of one building north of this, and the two buildings south. The proposed replacement building exercises the existing non-conformity, but expands at the required front yard setback as averaged. (Average = 47.41'; setback is +/- 5', providing an **acceptable front yard setback of 42.41-52.41.**) Revised Plan A2 illustrates the introduction of new window wells on both the north (3) and south (2) of 15 Hungerford Terrace. **All of these encroach into the required front yard setback, beyond the existing non-conformity that is captured by the building footprint.** Window wells are a segregate and defined building feature in Article 13 (*Definitions*), so are not interchangeable with retaining walls or landscape walls that are allowed exceptions to setbacks under Section 5.2.5 (b).

Window wells are also explicitly included as part of the allowable lot coverage bonus under **Section 4.4.5 (d) 2. A. (viii), *Exceptions for Residential Features*** (not applicable in this zoning district.) As an identified residential feature in both Article 13, *Definitions* and in this section, window wells are not commensurate with retaining walls or landscape walls, their substitution as

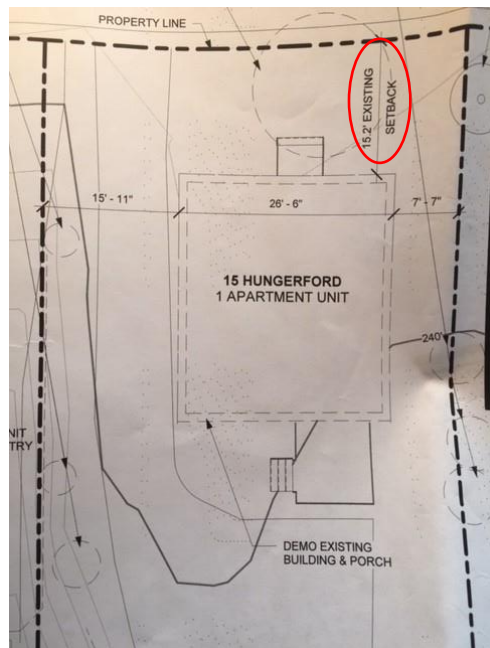
such inappropriate. The window wells present an encroachment (and increase in non-conformity) in this application.

The earlier PUD approval included a three story easterly porch on 15 Hungerford Terrace. The enthusiasm for providing a multi-level porch on the new building bypassed the limitation for setback encroachment for a first floor entry. This porch as proposed also encroaches into a required front yard setback. Zoning Administrative Interpretation ZAI 11-2 gives limited allowance for encroachment into a required setback:

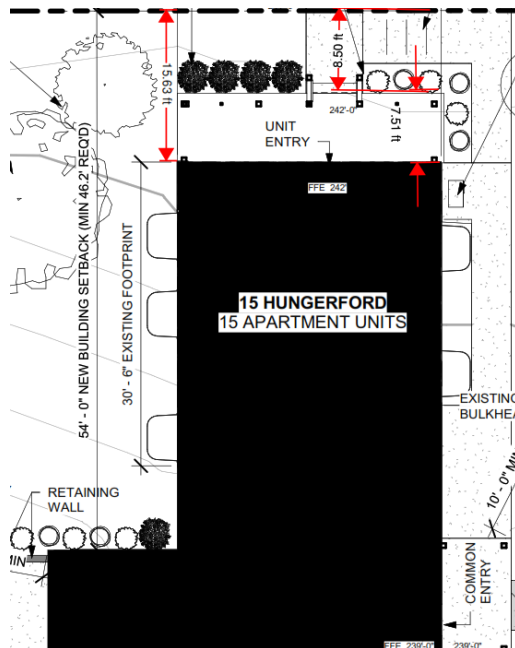
As provided below, first floor entries may project into a required yard setback provided:

1. *The entryway shall provide **access to the first floor only**.*
2. *The width of the entryway shall not exceed the pre-existing length of the building façade.*
3. *The depth of the entryway shall not exceed 8.0 feet.*
4. *The entryway may be enclosed or unenclosed, and if enclosed shall not be habitable, heated or insulated.*
  - a. *Upon any subsequent request to heat, insulate and otherwise make the entryway habitable, a new zoning permit shall be required and all applicable required yard setbacks that may be in effect at that time shall be met.*

As the porch is proposed to be three stories, it does not meet the limited allowance for encroachment (*access to the first floor only*.) Unless the porch is limited to first floor entry, it too increases the level of non-conformity to setback.



Existing non-conforming front yard setback, 15 Hungerford Terrace to be recaptured; 15.2'.



Proposed front yard setback 15 Hungerford. Existing building footprint recaptures 15' setback, but window wells and multi-level front porch encroach beyond the allowance of ZAI 11-2.

The relocated garage (behind 21 Hungerford) meets the minimum 5' for an accessory structure. The encroachment of the driveway access at 21 Hungerford will be corrected. The remaining

setbacks at 273 Pearl and 221 Hungerford remain as existing. See setback standards for retaining walls under Article 5.

Building height will not exceed 35' as measured from the sidewalk on Hungerford Terrace.

**Adverse finding for (window well and three story porch) encroachment into required Front Yard Setback.**

**(c) Permitted and Conditional Uses:**

Attached dwellings, Multi family 3 or more is a permitted use in the RH zoning District.

**Affirmative finding.**

**(c) District Specific Regulations**

**1. Setbacks**

**A. Encroachment for Residential Driveways**

Not applicable.

**B. Encroachment into the Waterfront Setback.**

Not applicable.

**2. Height**

**A. Exceptions in the Waterfront RM District.**

Not applicable.

**3. Lot Coverage**

**A. Exceptions for Accessory Residential Features.**

This does not apply to the RH zoning district. Not applicable.

**4. Accessory Residential Structures and Uses**

One of the existing garages will be relocated to the west/rear of 21 Hungerford Terrace to be repurposed for trash/recycling, and located the minimum required 5' setback. The other garage at 11 Hungerford Terrace is proposed to be demolished. **Affirmative finding.**

**5. Residential Density**

**A. Additional Unit to Multi-Family.**

Not applicable.

**B. Additions to Existing Residential Structures.**

Not applicable.

**C. Residential Occupancy Limits.**

*In all residential districts, the occupancy of any dwelling unit is limited to members of a family as defined in Article 13.*

Not more than four unrelated adults may occupy any single residential unit. **Affirmative finding as conditioned.**

**6. Uses**



**A. Exception for Existing Neighborhood Commercial Uses.**  
Not applicable.

**7. Residential Development Bonuses.**  
No residential development bonuses are sought. Not applicable.

## **Article 5: Citywide General Regulations**

**Section 5.2.3 Lot Coverage Requirements**  
See Table 4.4.5-3, above. **Affirmative finding with IZ bonus.**

**Section 5.2.4 Buildable Area Calculation**  
Not applicable in RH.

**Section 5.2.5 Setbacks**  
See Table 4.4.5-3, above. **Adverse finding** for window well and three story porch encroachment into Front Yard Setback.

**Section 5.2.6 Building Height Limits**  
See Table 4.4.5-3, above.

**Section 5.2.7. Density and Intensity of Development Calculations**  
See Table 4.4.5-2, above. This meets the limitation for intensity of use including IZ.  
**Affirmative finding.**

## **Part 3: Non-Conformities**

### **Section 5.3.5 Nonconforming Structures**

#### **(a) Changes and modifications:**

*Any change or modification to a nonconforming structure, other than to full conformity under this Ordinance, shall only be allowed subject to the following:*

- 1. Such change or modification may reduce the degree of nonconformity and shall not increase the nonconformity except as provided below.*
- 2. Such change or modification shall not create any new nonconformity,*

The existing 15 Hungerford Terrace is non-conforming to front yard setback. The proposed redevelopment will continue this non-conformity to the same degree as to the building footprint, however the **newly introduced window wells expand the level of non-conformity by introducing more structure within a required setback.** Similarly, the three story easterly porch exceeds the allowance of ZAI 11-2, which limits encroachment to first floor entries. The expanded structure will NOT meet the required front yard setback as calculated using the average front yard setbacks of 11, 21 and 27 Hungerford Place; the window wells and porch expanding the level of non-conformity to setback, specifically prohibited by this section.

**Adverse finding.**

**Sec. 5.4.8 Historic Buildings and Sites**  
See standards and conditions issued under ZP20-0717CA/MA.

### **Section 5.5.1 Nuisance Regulations**

With adequate tenant oversight, nothing in the proposal appears to constitute an identified nuisance under this criterion. Lighting, must meet the standards of Section 5.5.2, below.

**Affirmative finding as conditioned.**

### **Section 5.5.2 Outdoor Lighting**

Lighting as approved under the original submission and the revised photometric submitted March 24, 2021 remains in effect. **Affirmative finding as conditioned.**

### **Section 5.5.3 Stormwater and Erosion Control**

A written approval of the Erosion Prevention and Sediment Control Plan and Stormwater Plan was provided September 24, 2020. Compliance post construction remains a condition prior to issuance of any Certificate of Occupancy. **Affirmative finding as conditioned.**

## **Article 6: Development Review Standards**

### **Part 1: Land Division Design Standards**

No land division or boundary line adjustments are proposed. As a Planned Unit Development (PUD), the development area was by the DRB under Article 11 in the original review.

### **Part 2: Site Plan Design Standards**

#### **Sec. 6.2.2 Review Standards**

##### *(a) Protection of Important Natural Features*

A revised landscaping plan has been submitted 1.24.2022 See Plan A3. **Affirmative finding.**

##### *(b) Topographical alterations*

See original approval.

##### *(c) Protection of important public views*

There are no protected important public views from or through the property. **Affirmative finding.**

##### *(d) Protection of important cultural resources*

See original approval.

##### *(e) Supporting the use of alternative energy*

See original approval.

##### *(f) Brownfield sites*

The properties are not listed on the Vermont DEC Hazardous Waste Site. Not applicable.



*(g) Provide for nature's events*

See original approval.

*(h) Building location and orientation*

The front setback duplicates that of the building to be demolished, with the footprint expanding further west, consistent with the setback average of the three neighboring properties. (Average setback is **47.4'** when averaging 11, 21 and 27 Hungerford. Front setback may be +/- 5' of that average.) Retention of the existing setback, to the same degree, is acceptable. The introduction of new structure within the non-conforming front yard setback is not allowable, however. The new window wells on the north and south of the replacement building at 15 Hungerford Terrace increase the level of non-conformity to setback, as does the three story porch. **Adverse finding.**

*(i) Vehicular access*

See original approval.

*(j) Pedestrian access*

A new pedestrian walkway is introduced between 11 and 15 Hungerford Terrace, connecting to a unit entry on the north side of 15 Hungerford. The other previously approved walkway south of 15 Hungerford Terrace has been moved to accommodate proposed window wells (located in the Front Yard Setback.) This walkway similarly terminates at a common building entrance.

**Affirmative finding** for pedestrian access, **adverse finding** for Window wells in front yard setback.

*(k) Accessibility for the handicapped*

The newly numbered unit 4 is identified as fully accessible; units 1, 2, 3, 5, 6, 7 as adaptable, and all units on the second and third floor will meet Visitability standards for access.

2 ADA parking spaces are provided (one immediately behind 21 Hungerford, and one to the north of the new building at 15 Hungerford; both providing a loading area.) The building inspector has jurisdiction relative to the acceptability of the number of accessible spaces and their specific dimensions. **Affirmative finding as conditioned.**

*(l) Parking and circulation*

Plan A2 provides 25 parking spaces on the collective parcels, as previously approved.

273 Pearl Street will retain its 6 existing permitted parking spaces for the dental office/1 residential unit. As this property is within the Multi Modal Mixed Use parking district, there are no minimum parking requirements, and these spaces may be allocated differently.

11, 15 and 21 Hungerford (21 units) will therefore collectively share 25 spaces.

The original PUD approved 25 parking spaces, and a 17 space parking waiver.

The requirements within the Neighborhood Parking District are 2 parking spaces for every residential unit.

The adoption of the MMMU parking district (effective for the Pearl Street property) alters the required parking calculation.

Address	Use	Parking requirement	Parking provided
273 Pearl Street	Dental office	0 (MMMU)	6 spaces
273 Pearl	1 residential unit	0 (MMMU)	
11 Hungerford	5 residential units	10	19 spaces
15 Hungerford	12 + 3 = 15	30	
21 Hungerford	1 residential unit	2	
Total	22 units	42	25 spaces.

The original PUD received a 17 space, or 47.22% parking waiver. (42 spaces required, 25 provided, 17 space parking waiver.) Considering the adoption of the MMMU parking district, the parking demand for the overall PUD diminishes to **42 parking spaces** (rather than 45). With the elimination of minimum parking standards at 273 Pearl Street (MMMU parking district), those 6 spaces may now be dedicated to the three new residential units proposed at 15 Hungerford Terrace, so there is no longer any demand for off-site spaces (as was earlier requested.) The parking waiver remains consistent at 17 spaces.

Parking spaces are a mix of standard (9 x 18) and compact (8 x 16).

There are no longer back-up minimum requirements, but aisle width must be at least 12'. The plan is compliant to that minimum width.

A Parking management Plan had previously been adopted, weighing largely on tenants without cars, advantageous location near the downtown, and shared parking by critical use periods. The plan further hinges on specific tenant selection practices and required tenant education. Both of these tools rely on the methods and practices of current owners; their continued success largely reliant under practices of ownership. The management plan still has value for this application, and should remain as previously adopted.

Finally, the applicant/owners include up-front monthly charges for parking on-site to discourage vehicular ownership. Parking is permitted on-site by permit and assigned space only, with towing enforced.

Owners will provide information to tenants about ridesharing programs and maintain a group membership with Car Share Vermont, offering to tenants free of charge. GMT bus passes are provided to tenants on a first-come basis. Bicycle parking will now be located in individual units, rather than the bike storage space in the basement. See attachment for Bike Nook product. Grocery trollies will be made available to tenants.

Article 8 defines the requirement to meet the parking demand of new development effectively. A proposed parking management plan must guarantee present and future success, enforceable over the long term. The creation of 52 new bedrooms with only 25 parking spaces is challenging; and hinged in this application with active and enduring management by owners.

Surface parking requires shading to reduce the effect on the local microclimate, air quality, and stormwater runoff. New or substantially improved parking areas must shade at least 30% of the parking lot. 1 shade tree shall be provided for every 5 parking spaces with a minimum caliper size of 2 ½ -3” at planting. As was previously noted, a significant number of existing trees will be removed for this redevelopment. Plan A3 of the original approval details the addition of 2 Honey Locust and 2 Elms; the remainder of the plantings shrubs and ornamentals. Plan A4 illustrated site shading. While a portion of the paved area is shaded in late June (a.m.), the 30% shading requirement is functionally met during the winter months when the sun is at its lowest.

Short term bicycle parking has been modified to be immediately in front of 15 Hungerford Terrace. Long Term bicycle parking will be relocated to within individual residential units. With 52 new bedrooms, at least 26 long term bicycle parking spaces will be required for the residential use. (1 bike parking/2 bedrooms requirement). This is more fully addressed under Article 8.

**Affirmative finding as conditioned.**

*(m) Landscaping, fences and retaining walls*

A revised landscaping plan has been provided for this review. See Plan A3. Some changes in this amendment include a differently oriented retaining wall north of 15 Hungerford, and alterations to the planting plan, particularly at building entrances.

This standard requires:

*Retaining walls greater than 5 feet tall shall incorporate textured surfaces, terracing, and/or vegetation to avoid long monotonous unarticulated expanses and to minimize adverse visual impacts to neighboring properties. As with fences, retaining wall styles, materials, and dimensions shall be compatible with the context of the neighborhood and use of the property.*

Civil plans C2.2 and C4.2 and Plan A8 of the original PUD defined the gravity wall as terraced with plantings. No changes are identified that veer from that approval.

Heights vary from 2-12’. As the involved properties all sit on the cusp of the Burlington Ravine and have consistently struggled with the changing grade inherent to their site, this is the context of the neighborhood. Review of retaining walls greater than 3’ in height is the responsibility of the City Engineer. **Affirmative finding as conditioned.**

*(n) Public plazas and open space*

While there are no formal public plazas included in the plan, “open green space” is annotated on Plan A2. This occurs between 11 Hungerford and the new 15 unit residential building, now partially bisected by a new pedestrian walkway. Given the large number of residential units proposed for the combined site, some outdoor amenity space has been encouraged to be identified and programmed for the enjoyment of the tenants. Open space / common land is a requirement of PUDs under Article 11. **Affirmative finding as conditioned.**

*(o) Outdoor lighting*

Conditions of the original PUD included a condition that a revised photometric be provided. This condition was met March 24, 2021, and remains in effect. If any other lighting is proposed

that might impact that photometric, plans shall be submitted for staff review and approval.

**Affirmative finding as conditioned.**

*(p) Integrate infrastructure into the design*

Civil plan C2.3 xof the original PUD showed a continuation of overhead electric service to both 21 Hungerford and the new 15 Hungerford building. New construction demands undergrounding of on-site utilities, Meters, utility connections, HVAC or similar mechanical equipment should be coordinated with the design of the building, and grouped in a service court out of public view. All need to be illustrated on elevations and/or site plans to determine appropriateness of location and necessity of screening.

No rooftop mechanicals are identified. If such units are proposed, they need to be provided with plans to be assessed for compliance with the standards of the ordinance.

The location of trash and recycling facilities was defined and approved within the relocated garage at the southwesterly corner of the collective lots.

Residential mailboxes have been relocated to the south elevation of 15 Hungerford Terrace. An interior or sheltered porch location where unit boxes can be accessed by tenants is preferable and more consistent with residential use. The Common Entry on the south elevation or alternately at an interior common area are recommended for resident mail delivery, and has been recommended by the DAB in previous review. **Affirmative finding as conditioned.**

### **Part 3, Architectural Design Standards**

#### **Section 6.3.2 Review Standards**

**(a) Relate development to its environment:**

***1. Massing, Height and Scale:***

The amendment has provided revised building elevations, which are not substantially different from the originally approved plan. The automotive service station on Pearl Street somewhat ameliorates the view from the north. **Affirmative finding.**

***2. Roofs and Rooflines.***

The new building has connected flat roofs; differing from either the north or south detached building that will abut it. The roof scheme will help ameliorate its massing. **Affirmative finding.**

***3. Building Openings***

Building openings are symmetrically arranged on the primary façade, with rhythmic structural punctures on other elevations. This amendment has altered window arrangements; particularly in introducing small windows on the easterly most side of the south elevation and the northerly side of the east elevation which are out-of-scale for the large building mass. There is some rearranging of single versus paired windows in other locations. Most notably is the introduction



of below grade windows within window wells for the newly introduced units. Some alteration is evident on the balconies as well. **Affirmative finding.**

**(b) Protection of Important Architectural Resources:**

*Burlington's architectural and cultural heritage shall be protected through sensitive and respectful redevelopment, rehabilitation, and infill. Where the proposed development involves buildings listed or eligible for listing on a state or national register of historic places, the applicant shall meet the applicable development and design standards pursuant to Sec. 5.4.8. The introduction of new buildings to a historic district listed on a state or national register of historic places shall make every effort to be compatible with nearby historic buildings.*

This was addressed in the earlier PUD review.

**(c) Protection of Important Public Views:**

There are no protected important public views from this site. Not applicable.

**(d) Provide an active and inviting street edge:**

The removal and replacement of 15 Hungerford Terrace has introduced a substantially larger and more imposing structure to the streetscape. While style or massing provide a counterpoint to the context of the older street, it does offer an identifiable front portal, infill that completes the street and some larger windows to warm the streetface. Easterly porches have been extended to strengthen the horizontal element of the design, tying it in with neighboring properties. **The easterly porches on 15 Hungerford, however, encroach into a required Front Yard setback beyond the allowances of ZAI 11-02.** See Section 4.4.5-3, above.

**(e) Quality of materials:**

*All development shall maximize the use of highly durable building materials that extend the life cycle of the building, and reduce maintenance, waste, and environmental impacts. Such materials are particularly important in certain highly trafficked locations such as along major streets, sidewalks, loading areas, and driveways. Efforts to incorporate the use of recycled content materials and building materials and products that are extracted and/or manufactured within the region are highly encouraged.*

There are no substantive changes to material from the original approval.

**(f) Reduce energy utilization:**

All new construction is required to meet the Guidelines for Energy Efficient Construction pursuant to the requirements of Article VI. Energy Conservation, Section 8 of the City of Burlington Code of Ordinances. **Affirmative finding as conditioned.**

**(g) Make advertising features complementary to the site:**

No signage is proposed. Any signs will require a separate sign permit, consistent with the regulations of Article 7 and compliant to the residential zoning district standards. **Affirmative finding as conditioned.**

**(h) Integrate infrastructure into the building design:**

See Section 6.2.2. (p.)

**(i) Make spaces secure and safe:**

All applicable building and life safety code as defined by the building inspector and fire marshal will be required. Building entrances need to be adequately illuminated (but not to exceed 5 fc.) Adequate lighting at building entrances will support resident safety. See lighting standards of Section 5.5.2 and 6.2.2. (o), above.

An intercom system remains a recommendation to maximize personal safety of the residents in the new 15-unit structure. **Affirmative finding as conditioned.**

**Article 8: Parking**

**Section 8.1.8 Minimum Off-Street Parking Requirements**

Within the Neighborhood Parking District, 2 parking spaces are required for every residential unit. The earlier PUD approved a 17 space parking waiver.

(6 current spaces at 273 Pearl, and 19 proposed behind the Hungerford addresses = 25 spaces. Due to the adoption of the Multi Modal Mixed Use parking district, the dental office and one unit at 273 Pearl Street no longer has a minimum parking standard. The remaining 21 residential units have a parking requirement of 42 spaces. 42-25 provided = 17 space deficiency. A parking waiver (47%) remains consistent, concurrent with the adopted Parking Management Plan. See 8.1.15, below.

**Section 8.1.15 Waivers from Parking Requirements / Parking Management Plans**

A Parking management Plan has been approved, anticipating in great part tenants without cars, the proximity of downtown and local institutions, and shared parking by critical use periods. The plan further hinges on specific tenant selection practices and required tenant education. Both of these tools rely on the methods and practices of current owners; their continued success reliant under active management.

The applicant/owners include up-front monthly charges for parking on-site to discourage vehicular ownership. Parking is permitted on-site by permit and assigned space only, with towing enforced. As proposed, there are 25 parking spaces to be shared by 22 residential units and a dental office.

As previously approved, owners will provide information to tenants about ridesharing programs and maintain a group membership with Car Share Vermont, offering to tenants free of charge. GMT bus passes will be provided to tenants on a first-come basis. The applicant has assured that long term bicycle parking will be provided within the residential units. Bike storage is not

evident on provided site plans. Grocery trollies will be made available to tenants. **Affirmative finding as conditioned.**

### **Section 8.2.5 Bicycle Parking Requirements**

Table 8.2.5-1 defines the bicycle parking requirement as 1 per 2 bedrooms for long term storage, and 1 per 10 units for short term. In consideration of the new 15 unit residential building (52 bedrooms) 26 Long Term bicycle parking spaces are required, and 2 short term spaces. Bike parking is proposed within individual units, and along the Hungerford Terrace street entrance (see plan A1.5.) The applicant has provided a model product for interior bike storage (see Bike Nook) that will require installation sufficient to accommodate the 26 required Long Term bike parking spaces.

**Affirmative finding as conditioned.**

### **Article 9: Inclusionary and Replacement Housing**

#### **Section 9.1.5 Applicability** (As amended by the City Council 8/10/2015.)

As the proposed development includes more than 5 new dwelling units, it is subject to the inclusionary housing provisions of this Article. Fifteen percent of the total unit count must be inclusionary (Per Section 9.1.10, 15% of 14 new units = 2 IZ units). Approval for the adequacy of the inclusionary units will be required from the manager of the city's Housing Trust Fund. This number may be altered with the addition of any other new residential units added by this applicant or responsible party within 12 months. A final determination of inclusionary units will be made by the Housing Trust Fund Manager. **Affirmative finding as conditioned.**

#### **Sec. 9.1.7 Certificate of Inclusionary Housing Compliance**

*No certificate of occupancy for a project covered by this chapter shall be granted unless and until a Certificate of Inclusionary Housing Compliance has been issued by the Housing Trust Fund Manager. Affirmative finding as conditioned.*

#### **Section 9.1.13 Off-Site and Payment in Lieu Options**

##### **(a) Off-Site Option**

*The developer of a covered project may construct inclusionary units on a lot (or lots) within the City of Burlington other than that on which the covered project is located as determined by HUD's Low- and Moderate-Income Summary Data as updated annually. The offsite option may be utilized by right per the following scenario:*

- 1) Covered projects located in a census block where more than fifty-one percent (51%) of the residents are below eighty percent (80%) AMI as determined by HUD's Low- and Moderate-Income Summary Data may utilize the off-site option by right.*
- (2) In areas where less than fifty-one percent (51%) of the residents are below eighty percent (80%) AMI as determined by HUD's Low- and Moderate Income Summary Data, utilization of the off-site option shall not be allowed. In all cases, utilization of the off-site option shall be subject to the following conditions:*
  - i. The number of inclusionary units to be provided by the developer or by the developer's designee through off-site development shall be equivalent to the number otherwise required by this Article;*

- ii. No additional development provisions as outlined in Sec. 9.1.12 shall be granted to the development of units constructed off-site or to the project constructed on-site;
- iii. Off-site inclusionary units must be located within the City of Burlington;
- iv. All of the provisions of Sections 9.1.8 through 9.1.11 shall apply without exception to off-site inclusionary units under the provisions of this section; and,
- v. Waiver of provisions from the HTF with regard to minimum square footage and bedroom count relative to average size and bedroom count in a covered project is not permitted.

*The off-site option shall not apply to a project located within a waterfront zoning district nor shall it apply to off-campus student housing projects as defined by this Article. For the purposes of this Sec. 9.1.13, "site" shall consist of all adjacent lots which are the subject of a PUD or other single development application.*

**(b) Payment In-Lieu Option** *The developer of a covered project may provide a payment in lieu to the Housing Trust Fund rather than construct inclusionary units on or offsite contingent on AMI as determined by HUD's Low- and Moderate-Income Summary Data. The payment in lieu option may be utilized by right under the two following scenarios:*

*(1) Covered projects located in a census block where more than fifty-one percent (51%) of the residents are below eighty percent (80%) AMI as determined by HUD's Low- and Moderate-Income Summary Data may utilize the payment in lieu option subject to the following standards:*

- i. The payment in lieu fee shall be \$35,000 per dwelling unit for projects containing 5-16 dwelling units.*

The applicants have not expressed an intention to meet the IZ requirements offsite or as a payment in lieu; however if they are intending to utilize either option for the required Inclusionary Units, they must demonstrate compliance with the noted conditions and subject to confirmation of compliance by the Housing Trust Fund Manager.

**Affirmative finding as conditioned.**

#### **Section 9.1.14 General Requirements for Inclusionary Units**

- (a) In order to assure an adequate distribution of inclusionary units by household size, the bedroom mix of inclusionary units in any project shall be in the same ratio as the bedroom mix of the non-inclusionary units of the project.*

As noted. Additional provisions of Inclusionary standards, including gross floor area, interior amenities, marketing, and affordability will be required to meet the approval of the City's Housing Trust Manager. **Affirmative finding as conditioned.**

#### **Sec. 9.1.18 Timeline for Availability/Phasing of Inclusionary Units for Issuance of Certificate of Occupancy**

Inclusionary units shall be made available for occupancy on approximately the same schedule as a covered project's market units, except that certificates of occupancy for the last 10% of the market units will be withheld until certificates of occupancy have been issued for all inclusionary units. If the project is approved to be constructed in phases on an extended permit timeline, certificates of occupancy may be issued on a phased basis consistent with the conditions of approval per Section 9.1.17. **Affirmative finding as conditioned.**

## **Article 11: Planned Unit Development**

**Section 11.1.3 General Requirements and Applicability** *Any development involving multiple lots, tracts or parcels of land to be developed as a single entity, or seeking to place multiple structures and/or uses on a single lot where not otherwise permitted, may be permitted as a PUD subject to the provisions of this Article.*

*A Planned Unit Development may be permitted subject to minimum project size as follows in the following districts:*

*Residential High Density – no minimum project size.*

This standard allows development of multiple lots with no minimum lot size for a PUD in the Residential High Density Zone. **Affirmative finding.**

## **Section 11.1.4 Modification of Regulations**

*With the approval of the DRB after a public hearing, the following modifications the requirements of the underlying zoning may be altered within a planned unit development:*

- *Density, frontage, lot coverage and setback requirements may be met as calculated across the entire project rather than on an individual lot-by-lot basis.*
- ***Required setbacks*** *may apply only to the periphery of the project rather than on an individual lot-by-lot basis;*
- *More than one principal use and more than one principal structure may be permitted on a single lot, and*
- *Buildings may be of varied types including single detached, attached, duplex or apartment construction.*

*Any proposed modifications of regulations shall be listed in a statement accompanying the application submission and such modifications shall be subject to the provisions of Section 11.1.5 and Section 11.1.6.*

Calculations for lot area, intensity of use and setbacks have been provided for 273 Pearl Street, 11, 15 and 21 Hungerford Terrace. See Table 4.4.5-3. Parking has been calculated for the uses on those lots, in addition to the existing uses. More than one principal use and more than one principal structure are proposed within the PUD. Buildings are of varied types, including apartment construction. **Adverse finding for Front Yard Setback encroachment.**

## **Section 11.1.5 Approval Requirements**

*(a) The minimum project size requirements of Section 11.1.3 shall be met;*

There is no minimum project size for a PUD within the Residential High Density Zone.

*(b) The minimum setbacks required for the district have been met at the periphery of the project; See table 4.4.5-3, above. **Adverse finding** for Front Yard Setback encroachment (window wells, three story porch at 15 Hungerford.)*

*(c) The project shall be subject to design review and site plan review of Article 3, Part 4 and the standards of Article 6.*

See Articles 3 and 6, above.

*(d) The project shall meet the requirements of Article 10 for subdivision review where applicable;*  
Not applicable.

*(e) Density, frontage, and lot coverage requirements of the underlying zoning district have been met as calculated across the entire project;*  
See Table 4.4.5-3 (above.) **Affirmative finding.**

*(f) All other requirements of the underlying zoning district have been met as calculated across the entire project;*

See Section 4.4.5-3, above. **Adverse finding for encroachment into a required Front Yard Setback, and increase in the non-conformity relative to Front Yard Setback.**

*(g) Open space or common land shall be assured and maintained in accordance with the conditions as prescribed by the DRB*

Areas for green common use are identified on Plan A2. Many units have balconies to connect tenant and the outdoors. **Affirmative finding.**

*(h) The development plan shall specify reasonable periods within which development of each phase of the planned unit development may be started and shall be completed. Deviation from the required amount of usable open space per dwelling unit may be allowed provided such deviation shall be provided for in other sections of the planned unit development.*

The applicant has not requested any phasing schedule. The permit will have a typical three year life in which to complete the development. Redevelopment after demolition of historic structures have a 6 month clock between demolition and construction. Any proposed phasing plan will need to be approved by the DRB and included as part of decision and conditions.

**Affirmative finding as conditioned.**

*(i) The intent as defined in Sec. 11.1.1 is met in a way not detrimental to the city's interests;*  
*Sec. 11.1.1, Intent*

*(a) Promote the most appropriate use of land through flexibility of design and development of land;*

The concept of developing underutilized area behind existing structures is a traditional method of infill and intensification of use where encouraged though the Municipal Development Plan. See Section 3.5.6. (b) 10 of original PUD approval. **Affirmative finding.**

*(b) Facilitate the adequate and economical provision of streets and utilities;*  
The proposed new structure can be served by extended access road(s) within the site and utilizing public utilities. **Affirmative finding as conditioned.**

*(c) Preserve the natural and scenic qualities of open space;*  
Although the rear (west) of the properties is proposed for development of a parking area, there remains the terraced grade change with views to the west. Within the more densely developed neighborhood, the remaining green space north of 15 Hungerford, and residential balconies will offer exposure to scenery and open space. **Affirmative finding.**



*(d) Provide for a variety of housing types;*

The new units in the replacement building at 15 Hungerford are proposed to be three and four bedroom units. The remaining units at 273 Pearl, 11 Hungerford and 21 Hungerford will remain as existing. **Affirmative finding.**

*(e) Provide a method of development for existing parcels which because of physical, topographical, or geological conditions could not otherwise be developed;*

The project area retains an existing amount of infrastructure, buildings and parcels that abut the Burlington Ravine, one of the most challenging redevelopment components within the city. This project proposal allows for greater development and density within the buildable area of the collective parcels while addressing the complex challenge of the topography to the west. Enhanced infrastructure, including stormwater management for all four parcels, enables and enhances the overall project. **Affirmative finding.**

And;

*(f) Achieve a high level of design qualities and amenities.*

As proposed, the building design proposes intensifying the density with construction of a single multi-unit residential building. The building is articulated with differentiated materials and building planes; landscaping and balconies. Project plans include typical and welcome amenities for attractive residential complexes, particularly within established neighborhoods. **Affirmative finding.**

*(j) The proposed development shall be consistent with the Municipal Development Plan*  
See Sec. 3.5.6 (b) 10.

*(k) Any proposed accessory uses and facilities shall meet the requirements of Section 11.1.6 below.*

#### **Section 11.1.6 Accessory Facilities**

*(a) A planned unit development may contain a building or buildings intended for non-residential uses, such as but not limited to a community center, recreation facility, and child care center and/or business office if the DRB determines that such use or uses are compatible with the intended principle residential use.*

No accessory facilities are proposed. Not applicable.

#### **Article 13: Definitions:**

**Window Well:** The clear space created by a soil-retaining structure located immediately below a window whose sill height is lower than the adjacent ground level. The **window well** provides drainage around the window and in some cases, an emergency egress route from the structure.

As *Window Well* is a separate definition within Article 13, it is not interchangeable with *retaining wall* or *wall*, as addressed in **Exceptions to Setbacks, Section 5.2.5 (b) 2:**

2. Building and Site Features. Eaves, sills, roof overhangs, cornices, steps to first floor entries, walkways, ramps for the disabled, fences, walls, and similar building and site features may project into a required yard setback.

The addition of window wells on both north and south of 15 Hungerford Terrace presents an encroachment into a required Front Yard Setback, beyond the existing non-conformity of the existing building footprint, intended to be maintained in new construction. The proposed window wells, therefore, increase the level of non-conformity to setback.

**Adverse finding** for encroachment into Front Yard Setback and increasing the level of non-conformity to setback.

**If setback issues are resolved, the following are recommended:**

## **II. Conditions of Approval**

1. Where not altered herein, the original conditions of approval relative to MA/CU under 20-0717CA/MA, 20-0718CA, 20-0719CA and 20-0720CA remain in effect.
2. Impact Fees shall be paid based on the gross new area, and paid at least seven days prior to the occupancy of any part of the building. As calculated under the original PUD review and based upon submitted gross new area, impact fees are estimated to be:

**SF of  
Project** 10,176

<b>Department</b>	<b><u>Residential</u></b>	
	<b>Rate</b>	<b>Fee</b>
Traffic	0.199	2,025.02
Fire	0.225	2,289.60
Police	0.045	457.92
Parks	0.754	7,672.70
Library	0.467	4,752.19
Schools	0.975	9,921.60
<b>Total</b>	2.665	<b>\$ 27,119.03</b>

Said fees **may be waived in whole or in part** based on the number of inclusionary housing units. Any waiver shall be substantiated by the Housing Trust Fund Manager and formalized with a letter of compliance from that office.

3. Per Section 2.7.8, all expired zoning permits issued after July 1989 for any of the involved parcels (273 Pearl St., 11, 15 or 21 Hungerford Terrace) shall be closed

out and Certificates of Occupancy issued **prior to issuance of any FCO** for this permit.<sup>1</sup>

4. **Prior to release of the zoning permit**, a *revised* letter of water/sewer capacity shall be provided, reflecting the increase in the number of residential units.
5. Residential occupancy limits apply. Occupancy of each residential unit is limited to a Family as defined in Article 13. Not more than four unrelated adults may occupy any unit.
6. The proposed retaining wall (as revised, plan A2 on the north of 15 Hungerford) is subject to review and approval by the City Engineer if it exceeds 3' in height.
7. Hours of construction are limited to M-F 7:00 am to 5:30 pm, with Saturday hours restricted to interior work. No work shall occur on Sundays.
8. No certificate of occupancy for a project shall be granted unless and until a Certificate of Inclusionary Housing Compliance has been issued by the Housing Trust Fund Manager. For 14 net new units, 2 IZ units are required. Exercise of **Section 9.1.13 Off-Site and Payment in Lieu Options** shall meet the conditions and requirements of that Section, and be subject to confirmation of compliance by the Housing Trust Fund Manager.
9. For the 14 new units (52 bedrooms), **26 long term spaces, and 2 short term bike parking spaces** are required. The product (Bike Nook, or similar) is hereby accepted toward meeting the Long Term bicycle parking requirement.
10. The driveway curb cut must conform to VTrans Standard B-71 drawing.
11. If any other lighting is proposed that might alter the previously approved photometric, plans shall be submitted for staff review and approval.
12. New construction must commence within 6 months of the removal of the accessory garage.
13. All new construction is required to meet the Guidelines for Energy Efficient Construction pursuant to the requirements of Article VI. Energy Conservation, Section 8 of the City of Burlington Code of Ordinances.
14. An intercom system is recommended to maximize personal safety of the residents in the new 12-unit structure.
15. Any signs will require a separate sign permit.
16. Standard Permit Conditions 1-15.

**NOTE: These are staff comments only. The Development Review Board, who may approve, table, modify, or deny projects, makes decisions.**

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<sup>1</sup> ZA 17-03, Section 2.7.8: *The administrative officer is also authorized to deny all zoning permits for any property with an expired zoning permit without a final certificate of occupancy. Instead of withholding or denying a zoning permit, the administrative officer may grant such permit subject to the condition that the uncorrected zoning violation is corrected or the expired zoning permit is closed out with a final certificate of occupancy. Such action(s) shall take place before the issuance of a final certificate of occupancy on the new permit.*